

United States
Circuit Court of Appeals

For the Ninth Circuit.

3

DOLLAR STEAMSHIP LINE, a Corporation,
Plaintiff in Error,

vs.

JEANNETTE A. HYDE, United States Collector
of Customs, Port of Honolulu,
Defendant in Error.

Transcript of Record.

Upon Writ of Error to the United States District Court of
the Territory of Hawaii.

FILED

JUN - 9 1927

F. D. MORGENTHAU,
CLERK.

United States
Circuit Court of Appeals
For the Ninth Circuit.

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Plaintiff in Error,

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INDEX TO THE PRINTED TRANSCRIPT OF RECORD.

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

	Page
Argument on Demurrer to Complaint—Cause Submitted	14
Argument on Motion to Strike and Demurrer—Order Sustaining Motion to Strike and Demurrer and Order Granting Filing of Amended Complaint	16
Argument on Second Amended Complaint—Order Sustaining Said Demurrer to Second Amended Complaint.....	25
Assignment of Errors.....	33
Bond on Writ of Error.....	38
Certificate of Clerk as to the Statement.....	4
Certificate of Clerk U. S. District Court to Transcript of Record.....	41
Citation on Writ of Error.....	37
Clerk's Statement.....	2
Complaint	6
Decision Sustaining Demurrer to Second Amended Complaint and Exceptions Thereeto	29
Decree	30
Demurrer	13

Index.	Page
Demurrer to Second Amended Complaint.....	23
Election of Plaintiff to Stand on Pleadings....	29
Enlargement of Time to and Including April 24, 1927, for Docketing Case.....	4
Enlargement of Time to and Including April 30, 1927, for Docketing Case.....	5
Names and Addresses of Attorneys of Record.	1
Petition for Writ of Error and Allowance.....	32
Praecipe for Transcript of Record.....	40
Ruling on Demurrer.....	14
Ruling on Demurrer to Second Amended Com- plaint	25
Second Amended Complaint.....	17
Summons	11
Writ of Error.....	35

NAMES AND ADDRESSES OF ATTORNEYS
OF RECORD.

For Plaintiff:

DOLLAR STEAMSHIP LINE, a Corpora-
tion.

Messrs. THOMPSON, CATHCART &
BEEBE, Honolulu, Hawaii.

For Defendant:

JEANETTE A. HYDE, United States Col-
lector of Customs, Port of Honolulu.

SANFORD B. D. WOOD, Esq., United States
District Attorney, Federal Building, Hono-
lulu, Hawaii.

CHARLES H. HOGG, Assistant United States
District Attorney, Federal Building, Hono-
lulu, Hawaii. [1*]

In the District Court of the United States for the
Territory of Hawaii.

No. 170.

DOLLAR STEAMSHIP LINE, a Corporation,
Plaintiff,

vs.

JEANETTE A. HYDE, United States Collector
of Customs, Port of Honolulu,
Defendant.

*Page-number appearing at the foot of page of original certified
Transcript of Record.

CLERK'S STATEMENT.

Time of Commencing Suit.

July 29, 1926: Complaint filed and summons issued and delivered to the United States Marshal for the District of Hawaii.

Names of Original Parties.

Dollar Steamship Line, a corporation, plaintiff.
Jeanette A. Hyde, United States Collector of Customs, Port of Honolulu, Defendant.

Dates of Filing of Pleadings.

July 29, 1926: Plaintiff's bill of complaint.

October 21, 1926: Plaintiff's amended bill of complaint.

December 13, 1926: Plaintiff's second amended bill of complaint.

February 21, 1927: Election of plaintiff to stand on pleadings.

Service of Process.

July 29, 1926: Summons issued and delivered to U. S. Marshal, District of Hawaii, and same date was returned with the following return, to wit:
[2]

"United States Marshal's Office,
City of Honolulu, Territory of Hawaii.

I HEREBY CERTIFY, that I received the within writ on the 29th day of July, A. D. 1926, and personally served the same on the 29th day of July, A. D. 1926, upon Jeanette A. Hyde, United States Collector of Customs, Port of Honolulu, by delivering to, and leaving with Jeanette A. Hyde

said defendant named therein personally, at Honolulu, T. H., a certified copy thereof, together with a copy of the complaint certified to by Wm. L. Rosa, Clerk, attached thereto.

OSCAR P. COX,

U. S. Marshal.

By (Sgd.) O. F. Heine,

Office Deputy.

Honolulu, July 29th, A. D. 1926.''

Time When Proceedings Were Had.

August 27, 1926: Proceedings at argument on demurrer to complaint.

December 10, 1926: Proceedings at argument on motion to strike and demurrer to amended complaint. Decision sustaining same.

January 21, 1927: Proceedings at argument on demurrer to second amended complaint. Decision sustaining same.

February 21, 1927: Proceedings, decision on demurrer to second amended complaint and exceptions.

Dates of Filing Appeal Documents.

February 28, 1927: Petition for writ of error and allowance, assignment of errors, bond filed. Writ of error and citation issued.

March 1, 1927: Praecipe for transcript of record filed. Proceedings had before the Honorable J. T. DeBolt, District Judge, presiding. [3]

CERTIFICATE OF CLERK AS TO THE
ABOVE STATEMENT.

United States of America,
Territory of Hawaii,—ss.

I, Wm. L. Rosa, Clerk of the United States District Court for the Territory of Hawaii, do hereby certify the foregoing to be a full, true and correct statement showing the time of commencement of the above-entitled cause; the names of the original parties thereto, the several dates when the respective pleadings were filed; an account of the service of process, the time when proceedings were had and the name of the judge presiding and the date of filing appeal documents.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said District Court, this 14th day of April, A. D. 1927.

[Seal] WM. L. ROSA,
Clerk, United States District Court, Territory of
Hawaii. [4]

[Endorsed]: Filed March 24, 1927, at 9 o'clock
and — minutes A. M. [5]

[Title of Court and Cause.]

ENLARGEMENT OF TIME TO AND INCLUD-
ING APRIL 24, 1927, FOR DOCKETING
CASE.

For good cause shown, the time within which to docket this case and file the record thereof with the

Clerk of the United States Circuit Court of Appeals for the Ninth Circuit is hereby enlarged and extended to and including April 24, 1927.

Dated at Honolulu, T. H., March 24, 1927.

J. T. DeBOLT,

Judge, United States District Court, Territory of Hawaii. [6]

[Endorsed]: Filed April 14, 1927, at 10 o'clock and — minutes A. M. [7]

[Title of Court and Cause.]

ENLARGEMENT OF TIME TO AND INCLUDING APRIL 30, 1927, FOR DOCKETING CASE.

For good cause shown, the time within which to docket this case and file the record thereof with the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit is hereby enlarged and extended to and including April 30, 1927.

Dated at Honolulu, T. H., April 14, 1927.

J. T. DeBOLT,

Judge, United States District Court, Territory of Hawaii. [8]

[Endorsed]: Filed July 29, 1926, at 2 o'clock and 8 minutes P. M. [9]

In the United States District Court for the Territory of Hawaii.

DOLLAR STEAMSHIP LINE, a Corporation,
Plaintiff,

vs.

JEANETTE A. HYDE, United States Collector
of Customs, Port of Honolulu,
Defendant.

COMPLAINT.

Action to Recover Moneys Paid Under Protest.

Comes now the plaintiff above named and for cause of action against the above-named defendant alleges:

I.

That at all times hereinafter mentioned plaintiff has been and now is a corporation duly organized and existing under and by virtue of the laws of the State of California, and authorized to do and doing business in the Territory of Hawaii and within the jurisdiction of this court.

II.

That at all times hereinafter mentioned the defendant, Jeanette A. Hyde, has been and now is the duly appointed, qualified and acting United States Collector of Customs, Port of Honolulu, Territory of Hawaii, a resident of said Honolulu and within the jurisdiction of this court.

III.

That at all times hereinafter mentioned the plaintiff has been and now is the owner and operator of various steamships, one of said steamships being the SS. "President Lincoln" and [10] engaged in the business of carrying mails, passengers and goods, for hire, between various ports of the United States, including the port of Honolulu, Territory of Hawaii, and ports of foreign countries; that at the time of the commission of the illegal act hereinafter complained of, there was subsisting between the plaintiff and the United States of America and various individual shippers valid and binding contract for the carriage, for hire, of mails and various commodities, between the ports of the United States of America and ports of foreign countries, and return.

IV.

That on or about the 17th day of November, A. D. 1925, at Yokohama, Japan, one Seiichi Yamate, an alien holding a permit to re-enter the United States of America, said alien having been a resident of and domiciled in the Territory of Hawaii for a continuous period of eighteen years, said residence and domicile having been unrelinquished and said alien being desirous of returning thereto, became a passenger for hire aboard the SS. "President Lincoln," said vessel being bound for the port of San Francisco, California, via the port of Honolulu, the destination of Seiichi Yamate being Honolulu, Territory of Hawaii.

V.

That on the 26th day of November, A. D. 1925, said vessel arrived at said port of Honolulu, and said alien passenger was refused admission to said port and to the United States of America for the alleged reason that said alien was afflicted with a loathsome and/or dangerous contagious disease.
[11]

VI.

That immediately upon the exclusion of said alien as aforesaid, said defendant, Jeanette A. Hyde, Collector of Customs, as aforesaid, purporting to act under the provisions of Section 9 of the "Immigration Act of 1917" as amended by Section 26 of the "Immigration Act of 1924," and despite the fact that said alien was returning to an unrelinquished United States domicile in excess of seven consecutive years, and despite the proviso to said Section 9 of said "Immigration Act of 1917" as amended by Section 26 of the "Immigration Act of 1924" reading:

"That nothing contained in this section shall be construed to subject transportation companies to a fine for bringing to ports of the United States aliens who are by any of the provisos or exceptions to Section 3 of this Act exempted from the excluding provisions of said section,"

and the proviso to said Section 3 of the "Immigration Act of 1917" reading:

"That aliens returning after a temporary absence to an unrelinquished United States domicile of seven consecutive years may be ad-

mitted in the discretion of the Secretary of Labor, and under such conditions as he may prescribe,"

imposed against said defendant a fine of One Thousand Dollars (\$1,000.00) and in addition a sum equal to that paid by said alien for his transportation from the initial point of departure, indicated in his ticket, to the port of Honolulu, to wit, Forty Dollars (\$40.00), or a total of One Thousand Forty Dollars (\$1,040.00). [12]

VII.

That upon the imposition of said fine and for the purpose of effecting collection of the same, said defendant threatened to refuse clearance papers to said SS. "President Lincoln" and thereupon to effect the clearance of said vessel and to prevent inconvenience to the passengers aboard said vessel, and a breach of its mail and merchandise contracts, plaintiff paid to said defendant as collector as aforesaid, under duress and protest, said fine of One Thousand Forty Dollars (\$1,040.00) so illegally imposed and collected as aforesaid; that although demand has been made upon said defendant for the return of said sum of One Thousand Forty Dollars (\$1,040.00), said defendant has wholly failed, refused and neglected to repay the same or any part thereof to the plaintiff.

WHEREFORE, plaintiff prays judgment against defendant in the sum of One Thousand Forty Dollars (\$1,040.00), together with interest at the legal rate from the date of payment, together with its costs and disbursements herein expended.

Dollar Steamship Line

Dated: Honolulu, T. H., July 29, 1926.

DOLLAR STEAMSHIP LINE, a Corporation,

By (S.) STANLEY W. GOOD,
Its General Agent,
Plaintiff Above Named.

By THOMPSON, CATHCART & BEEBE,
2-13 Campbell Block, Honolulu,
Attorneys for Plaintiff Above Named.

(S.) E. H. BEEBE. [13]

Territory of Hawaii,
City and County of Honolulu,—ss.

Stanley W. Good, being first duly sworn on oath,
deposes and says:

That he is General Agent at Honolulu of the Dollar Steamship Line, a corporation, and as such General Agent is authorized to make this verification for and on behalf of said Dollar Steamship Line, a corporation; that he has read the foregoing complaint, knows the contents thereof and that the same is true to the best of his knowledge, information and belief.

(S.) STANLEY W. GOOD,

Subscribed and sworn to before me this 29th day
of July, 1926.

[Seal] (S.) RITCHIE G. ROSA,
Notary Public, First Judicial Circuit, Territory of
Hawaii. [14]

[Title of Court and Cause.]

SUMMONS.

Action brought in Said District Court, and the Complaint Filed in the Office of the Clerk of Said District Court in Honolulu.

The President of the United States of America,
GREETING: To Jeanette A. Hyde, United States Collector of Customs, Port of Honolulu, Honolulu, T. H., Defendant:

You are hereby directed to appear and answer the complaint in an action entitled as above, brought against you in the District Court of the United States, in and for the Territory of Hawaii, within twenty days after service.

And you are hereby notified that unless you appear and answer as above required, the said plaintiff will take judgment for any *or damages* demanded in the complaint, as arising upon contract, or it will apply to the Court for any other relief demanded in the complaint.

WITNESS the Honorable J. T. DeBOLT, Judge of said District Court, this 29th day of July in the year of our Lord one thousand nine hundred twenty-six and of the independence of the United States the one hundred and fifty-first.

[Seal]

(S.) WM. L. ROSA,

Clerk.

By _____,

Deputy Clerk. [15]

United States Marshal's Office,
City of Honolulu, Territory of Hawaii.

I hereby certify that I received the within writ on the 29th day of July, A. D. 1926, and personally served the same on the 29th day of July, A. D. 1926, upon Jeannette A. Hyde, United States Collector of Customs, Port of Honolulu, by delivering to and leaving with Jeannette A. Hyde, said defendant named therein, personally, at Honolulu, T. H., a certified copy thereof, together with a copy of the complaint certified to by Wm. L. Rosa, Clerk, attached thereto.

OSCAR P. COX,
U. S. Marshal.

By (S.) O. F. Heine,
Office Deputy.

Marshal's Civil Docket No. 1273. [16]

[Endorsed]: Filed August 17, 1926, at 1 o'clock and 45 minutes P. M.

Copy of the within demurrer is hereby acknowledged this 17th day of August, 1926.

(S.) THOMPSON, CATHCART & BEEBE,
E. H. S.,

Attorneys for Plaintiff. [17]

[Title of Court and Cause.]

DEMURRER.

Comes now Jeannette A. Hyde, United States Collector of Customs at the Port of Honolulu, the defendant above named, and demurs to the complaint herein upon the following grounds, to wit:

I.

That the complaint does not set out sufficient or any facts to constitute a cause of action.

II.

That the complaint does not set out facts sufficient to entitle the plaintiff to the relief prayed for or to any relief.

III.

That it affirmatively appears from the allegations of the complaint that the plaintiff is not entitled to the relief prayed for or to any relief.

WHEREFORE, it is prayed that said complaint be dismissed.

(S.) CHARLES E. CASSIDY,
CHARLES E. CASSIDEY,

Asst. United States Attorney, District of Hawaii,
Attorney for Defendant.

Dated: Honolulu, T. H., August 17, 1926. [18]

I, Charles E. Cassidy, Assistant United States Attorney for the District of Hawaii, attorney for defendant, do hereby certify that the foregoing demurrer is not filed for the purpose of delay and to my opinion is well taken in point of law.

(S.) CHARLES E. CASSIDY. [19]

PROCEEDINGS — ARGUMENT ON DEMUR-
RER TO COMPLAINT — CAUSE SUB-
MITTED.

From the Minutes of the U. S. District Court,
Territory of Hawaii.

Friday, August 27, 1926.

(Title of Court and Cause.)

Personally appeared Mr. Eugene H. Beebe, coun-
sel for the plaintiff, and also came Mr. Charles E.
Cassidy, Assistant United States District Attorney,
counsel for the defendant, and this case was called
for argument. After due hearing the Court or-
dered that counsel submit briefs. Counsel for the
defense was given to and including the 10th of
September in which time to file his opening brief;
counsel for the plaintiff was given to the 17th day
of September to file his answering brief and counsel
for the defense was given three days thereafter in
which to file his answer. [20]

[Endorsed]: Filed Oct. 4, 1926, at 9 o'clock and
05 minutes A. M. [21]

RULING ON DEMURRER.

This cause comes before the Court on the com-
plaint and demurrer filed herein. The grounds of
demur, in effect, are that the complaint does not
state a cause of action.

The complaint, in substance, shows that on November 17, 1925, at Seiichi Yamate, an alien, holding a permit to re-enter the United States, having resided in Hawaii 18 years, and his residence being unrelinquished, embarked at Yokohama, Japan, as a passenger on the plaintiff's steamship, the "President Lincoln," and on November 26, 1925, arrived at the port of Honolulu, his destination, and was refused permission to re-enter for the reason that he was afflicted with a loathsome and dangerous disease; that upon the exclusion of Yamate, the defendant, as Collector of Customs at the port of Honolulu, imposed against the plaintiff, the Steamship Company, a fine of \$1000.00 and the additional sum of \$40.00 for the transportation of Yamate from Honolulu to Yokohama; that upon the imposition of the fine the plaintiff, to effect clearance of the vessel in question, paid to the defendant as such Collector, under protest, the sum of \$1040.00, the total amount of the fine and passage money, for the recovery of which sum this action was instituted.

In my opinion, upon the facts as alleged in the complaint, not only was the alien passenger, Yamage, rightly excluded, but the Collector of Customs had no alternative [22] other than to impose and require the payment of the fine and passage money assessed against the Steamship Company, the plaintiff herein.

The demurrer, therefore, is sustained and the complaint dismissed.

(S.) J. T. DeBOLT,
Judge.

Oct. 4, 1926. [23]

PROCEEDINGS—ARGUMENT ON MOTION
TO STRIKE AND DEMURRER—ORDER
SUSTAINING MOTION TO STRIKE AND
DEMURRER AND ORDER GRANTING
FILING OF AMENDED COMPLAINT.

From the Minutes of the U. S. District Court,
Territory of Hawaii.

Friday, December 10, 1926.

[Title of Court and Cause.]

On this day came Mr. Eugene H. Beebe, of the firm of Thompson, Cathcart & Beebe, counsel for the plaintiff, and also came Mr. C. H. Hogg, Assistant United States District Attorney, counsel for the respondent, and this case was called for hearing on a motion to strike and demurrer. Argument was had by respective counsel and at the conclusion thereof the Court granted the motion to strike and sustained the demurrer. Whereupon Mr. Beebe moved for leave to amend the complaint herein in so far as paragraph five was concerned. Said motion was granted by the Court and Mr. Beebe was given five days within which time to file said amendment. The motion to strike was granted

and the demurrer sustained for the reason that the disease was not susceptible of detection at the time of the examination at the port of embarkation.
[24]

[Endorsed]: Filed December 13, 1926, at 2 o'clock and 35 minutes A. M. [25]

[Title of Court and Cause.]

SECOND AMENDED COMPLAINT.

Comes now the plaintiff above named and for cause of action against the above-named defendant alleges:

I.

That at all times hereinafter mentioned plaintiff has been and now is a corporation duly organized and existing under and by virtue of the laws of the State of California, and authorized to do and doing business in the Territory of Hawaii and within the jurisdiction of this Court.

II.

That at all times hereinafter mentioned the defendant, Jeanette A. Hyde, has been and now is the duly appointed, qualified and acting United States Collector of Customs, Port of Honolulu, Territory of Hawaii, a resident of said Honolulu, and within the jurisdiction of this Court.

III.

That at all times hereinafter mentioned the plaintiff has [26] been and now is the owner and operator of various steamships, one of said steam-

ships being the S.S. "President Lincoln" and engaged in the business of carrying mails, passengers and goods, for hire, between various ports of the United States, including the port of Honolulu, Territory of Hawaii, and ports of foreign countries; that at the time of the commission of the illegal act hereinafter complained of, there was subsisting between the plaintiff and the United States of America and various individual shippers valid and binding contract for the carriage, for hire, of mails and various commodities, between the ports of the United States of America and ports of foreign countries, and return.

IV.

That on or about the 17th day of November, A. D. 1925, at Yokohama, Japan, one Seiichi Yamate, an alien holding a permit to re-enter the United States of America, said alien being a resident of and having been domiciled in the Territory of Hawaii for a continuous period of eighteen years, said residence and domicile having been unrelinquished and said alien being desirous of returning thereto after a temporary absence abroad of approximately three months, became a passenger for hire aboard the S.S. "President Lincoln," said vessel being bound for the port of San Francisco, California, via the port of Honolulu, the destination of Seiichi Yamate being Honolulu, Territory of Hawaii.

V.

That prior to his embarkation upon said vessel at the [27] port aforesaid, said Seiichi Yamate was examined for contagious and/or loathsome and/

or other diseases by the medical authorities of the Empire of Japan, and was certified by such authorities as being free therefrom; that said Seiichi Yamate, prior to the sailing of said vessel, was again examined by the United States Public Health Service at Yokohama, Japan, for contagious and/or loathsome and/or other diseases, and was permitted by said Service to board said vessel as a person free from disease; that prior to the sailing of said vessel from the port aforesaid, said alien was again examined by the surgeon of said vessel, said surgeon being a competent physician and surgeon duly qualified and licensed to practice as such in the State of California and elsewhere, for contagious and/or loathsome and/or other diseases, and found to be without evidence thereof; that upon four occasions subsequent to the sailing of said vessel at the port of Honolulu, said Seiichi Yamate was examined by said surgeon for disease as aforesaid, none of said examinations revealing any symptoms of any contagious, loathsome or other disease; that said examinations were made by competent medical authorities, were made for the purpose of discovering whether or not said Seiichi Yamate was suffering from or afflicted with any contagious and/or loathsome and/or other disease; that if, at the time of said examinations said Seiichi Yamate was suffering from any such disease, the same had not progressed to such a stage that it was susceptible of discovery by competent medical examination. [28]

VI.

That subsequent to the 26th day of November, 1925, said date being the date of arrival of said vessel at said port of Honolulu, said alien was refused admission to the United States of America for the alleged reason that said alien was afflicted with a loathsome and/or contagious disease, to wit, leprosy.

VII.

That thereupon and notwithstanding the examinations aforesaid, it appeared to the satisfaction of the Secretary of Labor that said alien so brought to the United States as aforesaid, was afflicted with said disease at the time of foreign embarkation as aforesaid, and thereupon said Secretary determined that said disease might have been detected by means of a competent medical examination at said port of embarkation.

VIII.

That immediately upon such determination by said Secretary as aforesaid, said defendant, Jeanette A. Hyde, Collector of Customs, as aforesaid, purporting to act under the provisions of Section 9 of the "Immigration Act of 1917" as amended by Section 26 of the "Immigration Act of 1924," and despite the fact that said alien was returning from a temporary absence abroad to an unrelinquished United States domicile in excess of seven consecutive years, and despite the proviso to said Section 9 of said "Immigration Act of 1917 as amended by Section 26 of the Immigration Act of 1924," reading:

“That nothing contained in this section shall be construed to subject transportation companies to a fine for bringing to ports of the United States aliens who are by any of the provisos or exceptions [29] to Section 3 of this Act exempted from the excluding provisions of said section,”

and the proviso to said Section 3 of the “Immigration Act of 1917,” reading:

“That aliens returning after a temporary absence to an unrelinquished United States domicile of seven consecutive years may be admitted in the discretion of the Secretary of Labor, and under such conditions as he may prescribe.”

imposed against said defendant a fine of One Thousand Dollars (\$1000.00) and in addition a sum equal to that paid by said alien for his transportation from the initial point of departure, indicated in his ticket, to the port of Honolulu, to wit, Forty Dollars (\$40.00) or a total of One Thousand Forty Dollars (\$1040.00).

IX.

That upon the imposition of said fine and for the purpose of effecting collection of the same, said defendant threatened to refuse clearance papers to said S.S. “President Lincoln,” and thereupon to effect the clearance of said vessel and to prevent inconvenience to the passengers aboard said vessel, and a breach of its mail and merchandise contracts, plaintiff paid to said defendant as Collector as aforesaid, under duress and protest, said fine of

One Thousand Forty Dollars (\$1040.00) so illegally imposed and collected as aforesaid; that although demand has been made upon said defendant for the return of said sum of One Thousand Forty Dollars (\$1040.00) said defendant has wholly failed, refused and neglected to repay the same or any part thereof to the plaintiff. [30]

WHEREFORE, plaintiff prays judgment against defendant in the sum of One Thousand Forty Dollars (\$1040.00), together with interest at the legal rate from the date of payment together with its costs and disbursements herein expended.

Dated at Honolulu, T. H., this 13th day of December, A. D. 1926.

DOLLAR STEAMSHIP LINE, a Corporation,

By (S.) S. W. GOOD,
Its General Agent,
Plaintiff Above Named.

THOMPSON, CATHCART & BEEBE,
2-13 Campbell Block, Honolulu, T. H.,
Attorneys for Plaintiff.

Per (S.) E. H. BEEBE. [31]

Territory of Hawaii,
City and County of Honolulu,—ss.

Stanley W. Good, being first duly sworn on oath, deposes and says: That he is General Agent at Honolulu of the Dollar Steamship Line, a corporation, and as such General Agent is authorized to make this verification for and on behalf of said Dollar Steamship Line, a corporation; that he has

read the foregoing second amended complaint, knows the contents thereof and that the same is true to the best of his knowledge, information and belief.

(S.) S. W. GOOD.

Subscribed and sworn to before me this 13th day of December, A. D. 1926.

[Seal] (S.) RITCHIE G. ROSA,
Notary Public, First Judicial Circuit, Territory
of Hawaii.

Due service by copy of the within second amended complaint is hereby admitted.

(S.) CHARLES H. HOGG,
Attorney for Defendant.

Honolulu, Hawaii, December 13, 1926. [32]

[Endorsed]: Filed December 23, 1926, at 3 o'clock and — minutes P. M.

Copy of the within demurrer is hereby acknowledged this 23d day of December, 1926.

(S.) THOMPSON, CATHCART & BEEBE,
E. H. B.,
Attorneys for Plaintiff. [33]

[Title of Court and Cause.]

DEMURRER TO SECOND AMENDED COMPLAINT.

Comes now Jeannette A. Hyde, United States Collector of Customs at the Port of Honolulu, the defendant above named, and demurs to the second

amended complaint herein upon the following grounds, to wit:

I.

That the said second amended complaint does not state facts sufficient to constitute a cause of action.

II.

That said second amended complaint does not set out any facts which entitle the plaintiff to recover against the defendant.

III.

That the said second amended complaint does not set out facts sufficient to entitle the plaintiff to the relief prayed for in said second amended complaint or to any relief whatever.

WHEREFORE, the defendant prays that the said second amended complaint be dismissed.

Dated: Honolulu, Hawaii, December 23, 1926.

(S.) CHARLES H. HOGG.

CHARLES H. HOGG,

Asst. United States Attorney, District of Hawaii,
Attorney for Defendant. [34]

I, Charles H. Hogg, Assistant United States Attorney for the District of Hawaii, attorney for defendant, do hereby certify that the foregoing demurrer is not filed for the purpose of delay and to my opinion is well taken in point of law.

(Sgd.) CHARLES H. HOGG. [35]

PROCEEDINGS—ARGUMENT ON SECOND
AMENDED COMPLAINT—ORDER SUS-
TAINING SAID DEMURRER TO SECOND
AMENDED COMPLAINT.

From the Minutes of the U. S. District Court, Ter-
ritory of Hawaii.

Friday, January 21, 1927.

(Title of Court and Cause.)

On this day came Mr. E. H. Beebe, of the firm of Thompson, Cathcart & Beebe, counsel for plaintiff herein, and also came Mr. C. H. Hogg, Assistant United States District Attorney, counsel for the respondent, and this case was called for hearing on a demurrer to the second amended complaint. Thereupon and after due argument by respective counsel, the demurrer was sustained by the Court. An exception was entered by Mr. Beebe, who also gave notice of appeal. [36]

[Endorsed]: Filed January 22, 1927, at 11 o'clock and 25 minutes A. M. [37]

RULING ON DEMURRER TO SECOND
AMENDED COMPLAINT.

This cause again comes before the Court on the second amended complaint and the demurrer thereto filed herein. The grounds of demur, in effect, are that the complaint does not state a cause of action.

The complaint, in substance, shows that on No-

vember 17, 1925, Seiichi Yamate, an alien, holding a permit to re-enter the United States, having resided in Hawaii 18 years and his residence being unrelinquished, embarked at Yokohama, Japan, as a passenger on the plaintiff's steamship, the "President Lincoln," and on November 26, 1925, about ten days after embarkation, arrived at the Port of Honolulu, his destination, and was refused permission to re-enter for the reason that he was afflicted with a loathsome and dangerous disease, to wit, leprosy; that, notwithstanding the failure to discover that Yamate was afflicted with leprosy upon a medical examination of him made on behalf of the Steamship Company before he embarked, "it appeared to the satisfaction of the Secretary of Labor that said alien so brought to the United States as aforesaid, was afflicted with said disease at the time of foreign embarkation as aforesaid, and thereupon said Secretary of Labor determined that said disease might have been detected by means of a competent medical examination at said port of embarkation." (Paragraph VII, second amended complaint.)

That upon the exclusion of Yamate, the defendant, as Collector of Customs at the port of Honolulu, imposed against the plaintiff, the Steamship Company, a fine of \$1000.00 and the [38] additional sum of \$40.00 for the transportation of Yamate from Honolulu to Yokohama; that upon the imposition of the fine the plaintiff, to effect clearance of the vessel in question, paid the defendant as such Collector, under protest, the sum of \$1,040.00, the total amount of the fine and passage money, for the recovery of which sum, this action was instituted.

Under the provisions of Section 26 of the Immigration Act of 1924, Section 9 of the Immigration Act of 1917 is amended to read, so far as is material in this action, as follows:

“Sec. 9. That it shall be unlawful for any person, including any transportation company other than railway lines entering the United States from foreign contiguous territory, or the owner, master, agent, or consignee of any vessel to bring to the United States either from a foreign country or any insular possession of the United States any alien afflicted with idiocy, insanity, imbecility, feeble-mindedness, epilepsy, constitutional psychopathic inferiority, chronic alcoholism, tuberculosis in any form, or a loathsome or dangerous contagious disease, and if it shall appear to the satisfaction of the Secretary of Labor that any alien so brought to the United States was afflicted with any of the said diseases or disabilities at the time of foreign embarkation, and that the existence of such disease or disability might have been detected by means of a competent medical examination at such time, such person or transportation company, or the master, agent, owner, or consignee of any such vessel shall pay to the collector of customs of the customs district in which the port of arrival is located the sum of [39] \$1,000, and in addition a sum equal to that paid by such alien for his transportation from the initial point of departure, indicated in his ticket to the port of arrival for each and

every violation of the provisions of this section, such latter sum to be delivered by the collector of customs to the alien on whose account assessed. . . . *Provided further*, That nothing contained in this section shall be construed to subject transportation companies to a fine for bringing to ports of the United States aliens who are by any of the provisos or exceptions to section 3 of this act exempted from the excluding provisions of said section.”

It is contended on behalf of the Steamship Company that, according to the terms of the proviso just quoted, the alien in question was and is exempt. I cannot accept this view. Under the provisions of the above-quoted section it is made unlawful to bring to the United States “any alien afflicted with . . . a loathsome or dangerous contagious disease.” This language correctly describes the alien in question. Moreover, the Secretary of Labor, with regard to the alien in question, having “determined that said disease might have been detected by means of a competent medical examination at said port of embarkation,” was and is final and conclusive. The Court cannot go behind that finding.

The demurrer, therefore, is sustained and the complaint is dismissed.

(S.) J. T. DeBOLT,
Judge.

January 22, 1927. [40]

PROCEEDINGS — DECISION SUSTAINING
DEMURRER TO SECOND AMENDED
COMPLAINT AND EXCEPTIONS
THERE TO.

From the Minutes of the U. S. District Court, Terri-
tory of Hawaii.

Monday, February 21, 1927.

(Title of Court and Cause.)

On this day came Eugene H. Beebe, of the firm of Thompson, Cathcart & Beebe, counsel for the plaintiff, and also came Mr. C. H. Hogg, Assistant United States District Attorney, counsel for the respondent, and this case was called for decision on the demurrer to the second amended complaint. The Court sustained the demurrer to which decision Mr. Beebe entered an exception, said exception being granted by the Court. [41]

[Endorsed]: Filed February 21, 1927, at 10
o'clock and 40 minutes A. M. [42]

[Title of Court and Cause.]

ELECTION OF PLAINTIFF TO STAND ON
PLEADINGS.

Comes now the plaintiff in the above-entitled action, by Thompson, Cathcart & Beebe, its attorneys, and deciding not to amend its second amend complaint in the above-entitled action, stands on the pleadings.

Dated, Honolulu, T. H., February 21, 1927.

DOLLAR STEAMSHIP LINE, a Corporation,
 tion,

Plaintiff Above Named.

By THOMPSON, CATHCART & BEEBE,
 (S.) F. E. THOMPSON,
 (S.) E. H. BEEBE,
 Its Attorneys. [43]

[Endorsed]: Filed February 21, 1927, at 2 o'clock
 and 25 minutes A. M.

Copy of the within Decree received this 21 day of
 February, 1927.

(S.) THOMPSON, CATHCART & BEEBE,
 E. H. B.,
 Attorneys for Plaintiff. [44]

In the United States District Court for the Terri-
 tory of Hawaii.

Civil No. 170.

DOLLAR STEAMSHIP LINE,
 Plaintiff,

vs.

JEANNETTE A. HYDE, United States Collector
 of Customs, Port of Honolulu,
 Defendant.

DECREE.

This cause having come on regularly before the
 Honorable J. T. DeBolt, a Judge of this Court, to
 be heard upon the second amended complaint and

the demurrer thereto filed herein, and was argued by counsel, and submitted to the Court for its consideration and decision; and the Court being fully advised in the premises, sustained the defendant's demurrer to the plaintiff's second amended complaint, as shown by the decision rendered and filed herein on this 22d day of January, 1927; and the plaintiff having, in writing filed herein, elected not to further amend its complaint herein or to plead further, but to stand on its second amended complaint as filed herein, the Court finds that the second amended complaint does not state a cause of action against the defendant: [45]

NOW, THEREFORE, upon motion of Charles H. Hogg, Assistant United States Attorney, attorney for the defendant, it is hereby ORDERED, ADJUDGED AND DECREED that the defendant's demurrer to the plaintiff's second amended complaint filed herein be sustained, and that the cause be and hereby is dismissed and that the defendant recover from the plaintiff all costs of this action which are hereby taxed in the sum of \$15.00.

Dated: Honolulu, T. H., February 21, 1927.

(S.) J. T. DeBOLT,

Judge, United States District Court, Territory of Hawaii.

Plaintiff excepts to the entry of the foregoing Decree, which exception the Court hereby allows this 21st day of February, 1927.

(S.) J. T. DeBOLT,

Judge, United States District Court, Territory of Hawaii. [46]

[Endorsed]: February 28/27, at 9 o'clock and 05 minutes A. M. [47]

[Title of Court and Cause.]

PETITION FOR WRIT OF ERROR AND
ALLOWANCE.

Comes now Dollar Steamship Line, a corporation, plaintiff above named, by Thompson, Cathcart & Beebe, its attorneys, and feeling itself aggrieved by the decision and judgment sustaining the demurrer to its second amended complaint herein and denying its claim, and complaining that there is manifest error to the damage of the plaintiff in the same, as will more in detail appear from the assignment of errors which is filed with this petition prays that a writ of error may issue in this behalf out of the United States Circuit Court of Appeals for the Ninth Circuit under and according to the laws of the United States in that behalf made and provided, for the correction of the error so complained of, and that a transcript of the record, proceedings and papers in this cause, duly authenticated, may be sent to said Circuit Court of Appeals, and also [48] that an order be made fixing the amount of the security which the petitioner shall give and furnish upon the said writ of error, and that upon the giving of such security all further proceedings in this court be suspended and stayed until the determination of said writ of error by said United States Circuit Court of Appeals for the Ninth Circuit; and your petitioner will ever pray.

Dated, Honolulu, T. H., February 28, 1927.

DOLLAR STEAMSHIP LINE, a Corporation,
Plaintiff Above Named.

By THOMPSON, CATHCART & BEEBE,
(S.) F. E. THOMPSON,
(S.) E. H. BEEBE,

Its Attorneys.

Allowed, and the amount of the bond is hereby fixed at Five Hundred Dollars (\$500.00).

(S.) J. T. DeBOLT,
Judge of the United States District Court for the Territory of Hawaii. [49]

[Endorsed]: Filed Feby. 28/27, at 9 o'clock and 05 minutes A. M. [50]

[Title of Court and Cause.]

ASSIGNMENT OF ERRORS.

Comes now the above-named plaintiff, Dollar Steamship Line, a corporation, and says that in the records and proceedings in the above-entitled cause, there is manifest error in this, to wit:

I.

That the Court erred in sustaining the demurrer of the defendant to the second amended complaint of the plaintiff and in ordering judgment for the defendant.

II.

That the Court erred in entering judgment for the defendant and against the plaintiff.

III.

That the Court erred in holding and determining that the plaintiff, Dollar Steamship Line, was subject to the fine or penalty provided for by section 26 of the "Immigration Act of 1924," for bringing to the United States an alien returning after a temporary absence to an unrelinquished United [51] States domicile of seven (7) consecutive years, (Seventh proviso, Sec. 3, Immigration Act 1917), though it appears to the Secretary of Labor that such alien was suffering from a dangerous and/or contagious disease at the time of embarkation, and that the existence of such disease may have been discovered by competent medical examination at the point of foreign embarkation.

IV.

That the Court erred in holding that under the facts set forth in plaintiff's second amended complaint, it could not go behind the finding of the Secretary of Labor that plaintiff was liable to fine.

V.

That the Court erred in holding and determining that plaintiff take nothing by the cause of action set forth in its second amended complaint herein.

WHEREFORE, plaintiff prays that said judgment be reversed.

Dated, Honolulu, T. H., February 28, 1927.

DOLLAR STEAMSHIP LINE, a Corporation,

Plaintiff Above Named.

By THOMPSON, CATHCART & BEEBE,

(S.) F. E. THOMPSON,

(S.) E. H. BEEBE,

Its Attorneys. [52]

[Endorsed]: Filed Feby. 28/27, at 9 o'clock and
— minutes A. M. [53]

[Title of Court and Cause.]

WRIT OF ERROR.

United States of America,—ss.

President of the United States of America, to the
Honorable JOHN T. DeBOLT and the Hon-
orable WILLIAM T. RAWLINS, Judges of
the United States District Court for the Ter-
ritory of Hawaii, GREETING:

Because in the record and proceedings, as also
in the rendition of the judgment on the plea which
is in said District Court before you in the case of
Dollar Steamship Line, a Corporation, Plaintiff,
vs. Jeannette A. Hyde, United States Collector
of Customs, Port of Honolulu, Defendant, mani-
fest error has happened to the great damage of
said plaintiff as is said and appears by the peti-
tion herein;

We, being willing that error, if any hath been,
should be duly corrected, and full and speedy jus-

tice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Justices of the United States Circuit [54] Court of Appeals for the Ninth Circuit, in the city of San Francisco, in the State of California, together with this writ, so as to have the same at the said place in said court thirty (30) days after this date, that the record and proceedings aforesaid being inspected, the said Circuit Court of Appeals may cause further to be done therein to correct those errors what of right, and according to the laws and customs of the United States, should be done.

WITNESS the Honorable WILLIAM HOWARD TAFT, Chief Justice of the Supreme Court of the United States this 28th day of February, A. D. 1927.

ATTEST my hand and seal of the United States District Court in and for the Territory of Hawaii, in the Clerk's office, Honolulu, Territory of Hawaii, on the day and year last above written.

[Seal]

WM. L. ROSA,

Clerk of the United States District Court for the Territory of Hawaii.

Allowed this 28th day of February, A. D. 1927.

J. T. DeBOLT,

Judge of the United States District Court for the Territory of Hawaii. [55]

[Title of Court and Cause.]

CITATION ON WRIT OF ERROR.

United States of America,—ss.

The President of the United States of America, to JEANNETTE A. HYDE, United States Collector of Customs at the Port of Honolulu, and to the Honorable SANFORD BALLARD DOLE WOOD, United States District Attorney for the *District of the Territory of Hawaii*, Her Attorney, GREETING:

You are hereby cited and admonished to be and appear before the United States Circuit Court of Appeals for the Ninth Circuit, to be held at the city of San Francisco, in the State of California, within thirty (30) days from the date of this writ, pursuant to a writ of error filed in the Clerk's office of the United States District Court for the Territory of Hawaii, wherein Dollar Steamship Line, a corporation, is plaintiff, and you are defendant in error, to show cause, if any there be, why the judgment in said writ of error mentioned should not be [57] corrected and speedy justice not be done to the parties in that behalf.

WITNESS the Honorable J. T. DeBOLT, Judge of the United States District Court for the Territory of Hawaii, this 28th day of February, A. D. 1927.

J. T. DeBOLT,
Judge of the United States District Court for the
Territory of Hawaii.

Service on behalf of the defendant herein is hereby accepted.

SANFORD B. D. WOOD,
United States Attorney for the Territory of Ha-
waii,

Attorney for the Defendant. [58]

[Endorsed]: Filed Feby. 28, 1927, at 9 o'clock
and 50 minutes A. M. [59]

[Title of Court and Cause.]

BOND ON WRIT OF ERROR.

KNOW ALL MEN BY THESE PRESENTS:
That Dollar Steamship Line, a corporation, as
principal, and United States Fidelity & Guaranty
Company, a corporation organized under the laws
of the State of Maryland, as surety, are held and
firmly bound unto Jeannette A. Hyde, United
States Collector of Customs for the port of Hono-
lulu, defendant above named, in the penal sum of
Five Hundred Dollars (\$500.00) for the payment
of which well and truly to be made we bind our-
selves and our respective successors, executors, ad-
ministrators and assigns by these presents.

The condition of this obligation is such that,—

WHEREAS, on the 28 day of February, 1927,
the above-bounden principal sued out a writ of
error to the United States Circuit Court of Ap-
peals for the Ninth Circuit, from that certain
judgment made and entered in the above-entitled
court and cause on the 21st day of February, 1927,

by the Honorable J. T. DeBOLT, Judge of said court,— [60]

NOW, THEREFORE, if said principal shall prosecute said writ to effect, and answer all damages and costs if it fail to sustain said writ of error, then this obligation to be void; otherwise it shall remain in full force and effect.

WITNESS the hands of the above bounden this 28th day of February, 1927.

DOLLAR STEAMSHIP LINE, a Corporation,

Principal.

By (S.) S. W. GOOD,

Its General Agent.

UNITED STATES FIDELITY & GUARANTY COMPANY,

By (S.) HERMAN LUIS,

Its Attorney-in-fact,

Surety.

The foregoing bond is approved.

(S.) J. T. DeBOLT,

Judge of the United States District Court for the Territory of Hawaii. [61]

[Endorsed]: Filed March 1, 1927, at 3 o'clock and 15 minutes P. M.

Due service by copy of the within praecipe is hereby admitted.

(S.) SANFORD B. D. WOOD,

Attorney for Deft.

Honolulu, Hawaii, March 1, 1927. [62]

[Title of Court and Cause.]

PRAECIPE FOR TRANSCRIPT OF RECORD.

To William L. Rosa, Esquire, Clerk of the United States District Court for the Territory of Hawaii:

Pursuant to the writ of error issued in the above-entitled cause, you are hereby directed to transmit to the United States Circuit Court of Appeals for the Ninth Circuit, the record, duly certified, in the above-entitled cause, including the documents hereinafter referred to:

1. Plaintiff's original complaint herein, dated July 29, 1926.
2. Demurrer of the defendant, dated August 17, 1926, to said complaint.
3. Ruling of the Honorable J. T. DeBolt, dated October 4, 1926, on demurrer.
4. Plaintiff's second amended complaint, dated December 13, 1926.
5. Demurrer of defendant, dated December 23, 1926, to second amended complaint.
6. Ruling of the Honorable J. T. DeBolt, dated January 22, 1927, on demurrer to second amended complaint.
7. Election of plaintiff to stand on pleadings, dated February 21, 1927. [63]
8. Judgment or decree dated February 21, 1927, and exception.
9. Petition for writ of error and order allowing the same, filed February 28, 1927.

10. Assignment of errors, filed February 28, 1927.
11. Writ of error, filed February 28, 1927.
12. Citation on writ of error, and acknowledgment of service, filed February 28, 1927.
13. Bond on writ of error, filed February 28, 1927.
14. Praecipe for transcript of record.
15. Clerk's minutes.
16. Certificate.

Dated, Honolulu, T. H., March 1, 1927.

DOLLAR STEAMSHIP LINE, a Corporation,

Plaintiff Above Named.

By THOMPSON, CATHCART & BEEBE,

(S.) F. E. THOMPSON,

(S.) E. H. BEEBE,

Its Attorneys. [64]

In the United States District Court for the Territory of Hawaii.

United States of America,
Territory of Hawaii,—ss.

CERTIFICATE OF CLERK U. S. DISTRICT COURT TO TRANSCRIPT OF RECORD.

I, Wm. L. Rosa, Clerk of the United States District Court for the Territory of Hawaii, do hereby certify the foregoing pages, numbered from 1 to 65, inclusive, to be a true and complete transcript of the record and proceedings had in said court

in the above-entitled cause, as the same remains of record and on file in my office, and I further certify that I am attaching hereto two original orders enlarging time for docketing case, the original writ of error and citation and that the costs of the foregoing transcript of record is \$24.20, and that said amount has been paid to me by the appellants.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said court this 14th day of April, A. D. 1927.

[Seal] WM. L. ROSA,
Clerk, United States District Court, Territory of
Hawaii. [65]

[Endorsed]: No. 5129. United States Circuit Court of Appeals for the Ninth Circuit. Dollar Steamship Line, a Corporation, Plaintiff in Error, vs. Jeannette A. Hyde, United States Collector of Customs, Port of Honolulu, Defendant in Error. Transcript of Record. Upon Writ of Error to the United States District Court of the Territory of Hawaii.

Filed April 23, 1927.

F. D. MONCKTON,
Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

By Paul P. O'Brien,
Deputy Clerk.